

Request for removal of
one 26.0-inch diameter Willow Oak tree,
located in the east (side) yard of the property to
accommodate a proposed addition.

Mr. & Mrs. Dan Pryor
7 Newlands Street

CHEVY CHASE VILLAGE
BOARD OF MANAGERS
MARCH 18, 2013 MEETING

STAFF INFORMATION REPORT

TO: BOARD OF MANAGERS
FROM: ELLEN SANDS, PERMITTING AND CODE ENFORCEMENT COORDINATOR
DATE: 3/14/2013
SUBJECT: TREE REMOVAL APPEAL
MR & MRS. DAN PRYOR, 7 NEWLANDS STREET
FOR REMOVAL OF ONE 26.0-INCH DIAMETER WILLOW OAK TREE,
LOCATED IN THE EAST (SIDE) YARD OF THE PROPERTY.

APPLICABLE CHEVY CHASE BUILDING REGULATION:

The Chevy Chase Village Code §17-4 states in pertinent part:

(c) Appeal procedures

The Tree Ordinance Board shall determine if the tree(s) has such outstanding qualities that it should not be removed. If the Tree Ordinance Board finds that the tree is a candidate for removal, the Tree Ordinance Board shall meet with the applicant and/or the applicant's representative as soon as practicable but no later than ten (10) days after an appeal is filed. The Tree Ordinance Board shall work with the applicant to develop a reforestation plan which, taking into consideration the factors in Section 17-6, the Tree Ordinance Board finds would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties and would not substantially impair the purpose and intent of this Chapter. In developing the reforestation plan, the Tree Ordinance Board will affirmatively solicit input from residents of adjoining and confronting properties and from the Village Arborist.

If the applicant agrees to a reforestation plan that the Tree Ordinance Board finds meets the standards in sub-section (1) above, the Tree Ordinance Board shall prepare a report to the Board of Managers and the matter will be placed on the consent agenda for approval at the next Board of Managers meeting that is at least ten (10) days after the issuance of the Tree Ordinance Board's report. The matter may be removed from the consent agenda only at the request of two (2) or more members of the Board of Managers.

FACTUAL AND BACKGROUND INFORMATION:

The Applicants have received approval from the Historic Preservation Commission (HPC) for construction of an addition. This approval includes removal of the subject tree and a Pear tree which are in the location of the proposed porch (see plan).

The Village arborist has approved the Pear tree for an administrative removal permit.

Following the procedures laid out in Resolution 01-01-12, adopted in March of 2012, the Applicants met with the Tree Ordinance Board (report enclosed) regarding the Willow Oak, and have agreed to reforest per a consent agreement (draft enclosed).

The Applicants retained Davey Resource Co. to provide a survey of all trees on the property (enclosed) and Jane Krumbhaar MacLeish Landscape Architect to design a landscape plan for the property.

The Applicants intend to request additional tree removals after construction is completed and the landscape plan is implemented. The Village arborist has visited the property and determined that he would approve the other trees on the private property for removal (see enclosed email).



Figure 1: View (looking north) of 7 Newlands Street. The subject tree is located behind the fence in the east (side) yard.



Figure 2: The subject tree, flagged with green ribbon.

REPORT OF THE TREE ORDINANCE BOARD TO VILLAGE BOARD RE REMOVAL OF WILLOW OAK AT 7
NEWLANDS STREET

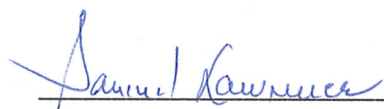
An appeal filed by Shannon and Dan Pryor to remove a large, willow oak in order to accommodate expansion of their porch was referred several months ago to the Tree Ordinance Board (TOB) for review per procedures approved by the Village Board in March 2012. The TOB deferred consideration of the appeal until the Pryors had gained the approval of the County Historic Preservation Commission (HPC) for the porch addition and the removal of the willow oak to accommodate it. Per the procedures specified for the TOB, I then notified the immediate neighbors and the Village Tree Committee of the proposed take down and the TOB expectations for reforestation. An objection to the takedown was received from one neighbor, who expressed his serious concern with the sharp reduction in the tree canopy experienced on Newlands Street due to development, disease and storm over the last several years.

In mid-February, HPC approved the porch addition and removal of the willow oak. Given the HPC's favorable action, the TOB focused its attention on plans to restore canopy lost by removal of this and other trees on the property approved for take down. Agreement was reached with the Pryor's development contractor that two canopy trees would be planted.

When the Pryors focused on this matter, they decided to retain a landscape design firm to plan a more comprehensive development of the entire 7 Newlands St. property. The tentative plan, which has been developed by Jane Krumbhaar MacLeish, will necessitate removal of an additional 18 trees that are 24" in circumference or larger on the property. Several of these trees, however, appear to be diseased. Dr. Feather has been requested to inspect the property and determine which qualify for administrative approval and which must be referred to the TOB.

Although the TOB would prefer to review appeals for tree removals on this property in their entirety, the timing of the porch construction necessitates acting now on the willow oak - before additional appeals can be formulated. The Board therefore submitted to the Pryors a proposed consent agreement (modeled on the form approved by the Village Board in an earlier case) conditioning the takedown on planting two canopy trees whose species and specific location will be determined at a later date.

The TOB, being cognizant of the Village Board's general policy to allow takedowns to accommodate new construction and the HPC's approval of this project, recommends to the Board that it approve the take down of the subject willow oak subject to the Pryor's acceptance of this consent agreement and their approval of a contract to initiate construction of the porch addition.

 3/13/2013

Samuel Lawrence, Chair, Tree Ordinance Board

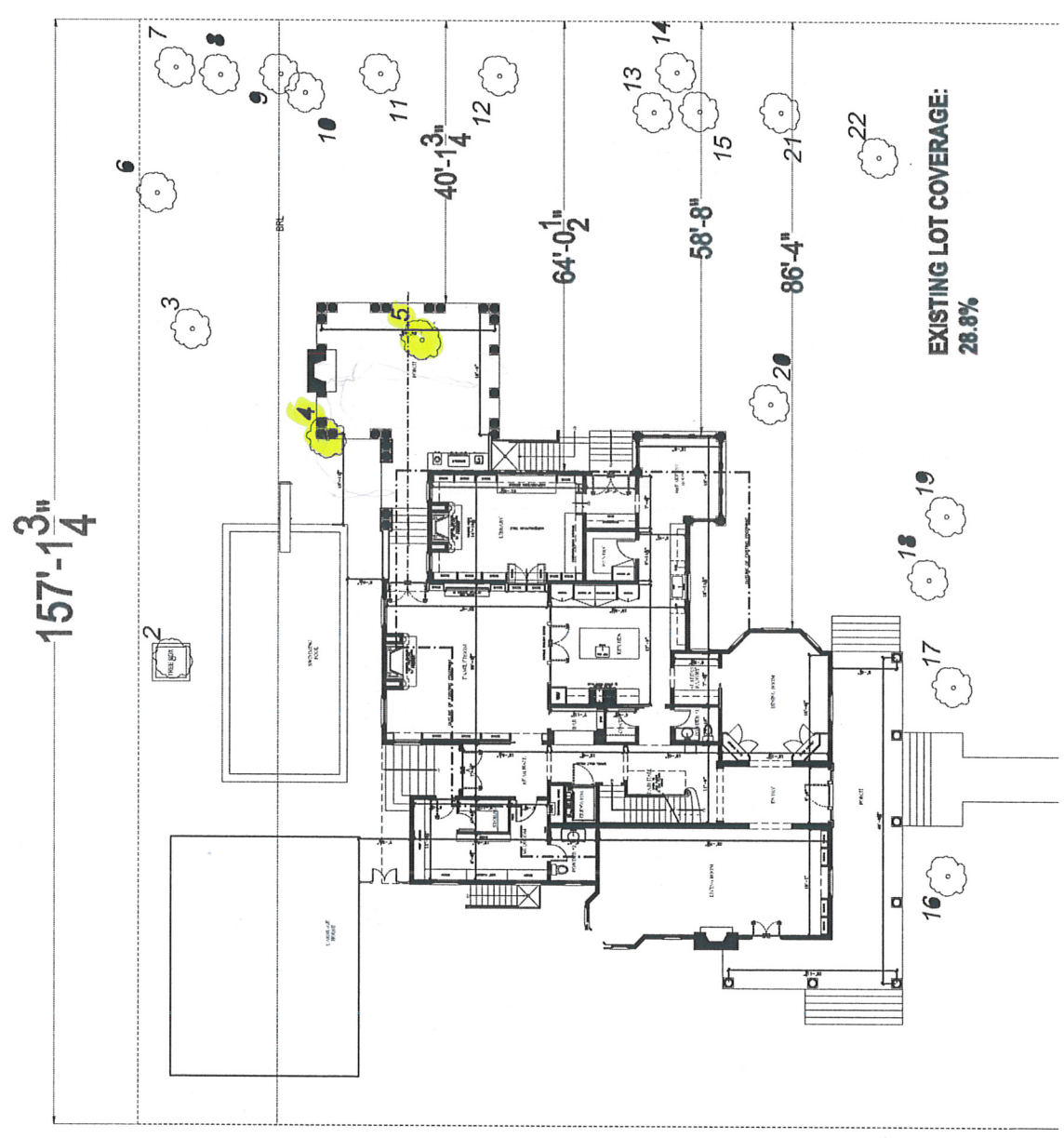
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PROJECT
PRYOR RESIDENCE
7 NEWLANDS ST.
CHEVY CHASE, MD 20815

DRAWING TITLE
PROPOSED
SITE PLAN

SUBMISSION:
THIRD PRELIMINARY
CONSULTATION
DATE: OCTOBER 28, 2012
SCALE: 1/8" = 1'-0"

A-1



25770
711.1400
= 18

Date: June 2012

Tree Protection Action Key

Project: 7 Newlands Street, Chevy Chase, MD

Tree #	DBH (Diameter at 4.5 feet above grade)	Common Name	Botanical Name	Condition Rating %	Condition on Rating	Approx Canopy Radius (FT)	CRZ (1.5 ft radius in Ft)	Priority for Protection (1-4)	Additional Notes	Condition Notes
1	14	pine, Scotch	Pinus sylvestris	64	Fair	14	21	3	trunk sweep, driveway conflict in planter box,	Small DW (1-2"), Root Damage/Decay, Broken Limbs, Overhead Utility,
2	8	holly, Fosters	Ilex x attenuata-Fosteri	66	Fair	7	12	2		Small DW (1-2"), Weak Union, Vines, Overhead Utility,
3	18	pear, Callery	Pyrus calleryana	58	Fair	21	27	3	poor form,	Included Bark, Weak Union,
4	20	pear, Callery	Pyrus calleryana	59	Fair	23	30	3	poor form,	
5	26	oak, willow	Quercus phellos	67	Fair	26	39	1	girdling roots, surface roots, cable candidate	Root Damage/Decay, Included Bark, Weak Union, One Sided, Suppressed, Overhead Utility,
6	3	elm, slippery	Ulmus rubra	69	Fair	6	5	3		Overhead Utility, Excessive Lean, Narrow Crown, Stressed, Vines,
7	7	locust, black	Robinia pseudoacacia	53	Fair	0	11	4	leans offsite	Excessive Lean,
8	8	douglas-fir	Pseudotsuga menziesii	63	Fair	6	12	3		Excessive Lean,
9	17	locust, black	Robinia pseudoacacia	61	Fair	22	26	3	lifted root,	Included Bark, Weak Union, Vines,
10	7	locust, black	Robinia pseudoacacia	52	Fair	10	11	3		Included Bark, Weak Union, Vines,
11	15	pear, Callery	Pyrus calleryana	61	Fair	28	23	3		Suppressed, Stressed, Hardware, Vines,
12	19	pear, Callery	Pyrus calleryana	61	Fair	28	29	3		Broken Limbs, Hardware, Vines,
13	9	pine, eastern white	Pinus strobus	56	Fair	11	14	3		Broken Limbs, Suppressed, Stressed, Hardware, Vines,
14	11	pine, eastern white	Pinus strobus	64	Fair	23	17	3		
15	7	pine, eastern white	Pinus strobus	56	Fair	12	11	3		
16	13	magnolia, saucer	Magnolia x soulangiana	69	Fair	19	20	1	needs clearance prune, possible herbicide damage to twigs	Trunk Decay, Weak Union, Stressed,
17	9.8	magnolia, saucer	Magnolia x soulangiana	64	Fair	17	17	1	possible herbicide damage to twigs	Broken Limbs, Vines,
18	14	pine, eastern white	Pinus strobus	67	Fair	14	21	2	trunk crook,	
19	11	pine, eastern white	Pinus strobus	67	Fair	12	17	2		Small DW (1-2"), Weak Union, Vines, One Sided, Vines,
20	14	cherry, Japanese flowering	Prunus serrulata	72	Good	18	21	1	weeping, needs clearance prune	Weak Union, Stressed, Vines, Large DW (3'+), Vines,
21	12	pine, eastern white	Pinus strobus	64	Fair	12	18	2		Small DW (1-2"), Broken Limbs, Vines, Large DW (3'+), Trunk Decay, Weak Union,
22	12	apple, common	Malus pumila	53	Fair	20	18	2	decline	Root Damage/Decay,
23	9.5	elm, slippery	Ulmus rubra	66	Fair	18	14	3		Root Damage/Decay, Trunk Decay, Stressed, Mechanical Damage, Serious Decline,
24	20	catappa, northern	Catalpa speciosa	67	Fair	24	30	2	trunk crook	Root Damage/Decay, Trunk Decay, Stressed,
25	28	zelkova, Japanese	Zelkova serrata	66	Fair	22	42	1	no town tag	Mechanical Damage,
26	14	planetree, London	Platanus x acerifolia	69	Fair	22	21	1	NE-B-23	Root Damage/Decay, Trunk Decay, Stressed, Mechanical Damage,
27	7	maple, red	Acer rubrum	69	Fair	15	11	1	GIRDLING ROOTS, NE-B-21	
28	12	zelkova, Japanese	Zelkova serrata	45	Poor	23	18	4	THIN, CHLOROTIC, NE-B-19	
29	9	blackgum	Nyssa sylvatica	58	Fair	13	14	3	NE-B-17	

CONSENT AGREEMENT

RECITALS

CHEVY CHASE VILLAGE, hereinafter referred to as the "Village", is a Maryland municipal corporation which is authorized to and does regulate the removal, destruction and impairment of certain trees on private property as set forth in Chapter 17, entitled Urban Forest, of the Chevy Chase Village Code.

Daniel Pryor and Shannon Pryor, hereinafter referred to collectively as the "OWNER", are the owners of Lot 24, Block 54, in the subdivision known as Section 2, CHEVY CHASE, as per plat thereof recorded in Plat Book 104 at Plat Number 11937 among the Land Records of Montgomery County, Maryland, also known as 7 Newlands Street, hereinafter referred to as the "Property".

The Owner requested a permit from the Village Manager under Section 17-3 of the Village Code to remove one 26.0" diameter Willow Oak, hereinafter referred to as the "Subject Tree", (the trunk of which measures more than 24 inches in circumference at 4 ½ feet above ground and therefore requires a permit for removal) located in the east (side) yard of the Property as indicated on the plan attached hereto as Exhibit A. The Owner seeks to remove the Subject Tree in order to construct a porch, hereinafter referred to as the "Proposed Work". The Village Manager denied the permit for failure to meet any of the conditions set forth in Section 17-3. The Historic Preservation Commission has now approved the Proposed Work and tree removal.

Under Section 17-4 of the Village Code, the Owner has appealed the denial of the permit. Under Section 17-5 of the Village Code, the Board of Managers of Chevy Chase Village has delegated the initial administration of appeals under Section 17-4 to a three-member Tree Ordinance Board ("TOB").

The TOB has met and visited the Property. The TOB, after consulting with the Village arborist, unanimously concluded that the Proposed Work was a legitimate reason for removing the Subject Tree, that it was necessary to remove the tree to construct the Proposed Work, and that the tree proposed to be removed was not by reason of its age, size or outstanding qualities, including uniqueness, rarity or species specimen, of such nature as to require its preservation. The Owner has agreed that, if allowed to remove the tree, they will reforest by planting two trees, of at least 2-½ inches in caliper, and that will grow to a height of forty-five (45) feet of a species and at a location that will be determined at a later date in consultation with and with the

approval of, the Tree Ordinance Board. hereinafter referred to as the Reforestation Tree, in the location indicated on the plan attached hereto as Exhibit A.

On March 8, 2013, the Chair of the TOB wrote to the residents at the abutting and confronting properties to inform them of the proposed take down and reforestation proposal. The following residents were notified: 8 Oxford Street, 10 Oxford Street; 12 Oxford Street; 5 Newlands Street; 11 Newlands Street; 10 Newlands Street; and 14 Newlands Street. _____ of the residents objected to the removal of the Subject Tree or the planting of the Reforestation Tree.

On March 8, 2013, the members of the Village Tree Committee were given written notice of the proposed removal and reforestation and asked to submit comments or objections by 5 p.m. on March 13, 2013. _____ comments or _____ objections were received by the TOB.

Based on the foregoing, the TOB recommends that the Owner's request to remove the Subject Tree be granted conditioned on:

(1) The Owner having, prior to removal of the tree, first obtained a permit from the Village authorizing construction of the Proposed Work and submitting to the Village Manager a construction contract for the same; and

(2) The Owner agreeing to reforest with the Reforestation Tree(s) in the location described above within twelve (12) months from the effective date of this Agreement.

NOW, THEREFORE, in consideration of the mutual undertakings and obligations herein contained, One Dollar (\$1.00) in hand paid, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Village and the Owner hereby agree and covenant as follows:

1. The Owner, if they have not already done so, will obtain a permit to construct the Proposed Work and submit to the Village Manager a construction contract for the same.
2. The Village, after the issuance of the aforesaid permit and receipt of the aforesaid construction contract for the Proposed Work, will grant a permit to the Owners for the purpose of removing the Subject Tree described above and located as indicated on Exhibit A promptly after the effective date of this Agreement (as defined in paragraph 12 below).
3. The Owner agrees to reforest within twelve (12) months from the effective date of this Consent Agreement by planting the Reforestation Tree(s) (or variety thereof) of at least 2 ½ inches in caliper in the location indicated on the plan known as

Exhibit A and to replace such tree if it becomes diseased or dies within two years of the effective date of this Agreement. The Owner further agrees to notify the Village Manager when the tree has been planted.

4. The Owner agrees to maintain the Reforestation Tree(s) at the Owner's sole expense and the Owner shall not remove, destroy, or impair the health of the reforestation tree in any way without the express prior written consent of the Village.

5. Any changes or modifications to the reforestation plan shall require the further written consent of the Village, which may be withheld in the Village's sole discretion.

6. The Owner acknowledges that compliance with this Consent Agreement is necessary for the protection of the public health, safety and welfare of the residents of the Village and acknowledge and agree, in the event of Owner's breach of this Agreement, that the Village would not have an adequate remedy at law, and the Village shall be entitled to specific performance of the Owner's obligations and to injunctive relief related thereto without posting a bond or proving actual damages, in addition to any other remedies which may be available. The Owner further agrees that the costs incurred by the Village, including legal expenses, shall be charged to the Owner and may be assessed against the Owner's property along with property taxes. The Owner further agrees not to contest any action brought by the Village to obtain specific performance and injunctive relief under this Agreement. The Owner also agrees that, if they fail to complete their reforestation obligations, the Village shall have the right to enter upon the Owner's property as it deems proper to install the reforestation tree(s).

7. The Owner also acknowledges that the Village and the public residing in the Village would incur substantial damages in the event of Owner's breach of the requirements of this Agreement, including, but not limited to, the costs of staff time, arborist time, and other expenses incurred in enforcing this Agreement and the diminution of the Village's tree canopy. The parties recognize the difficulty in computing actual damages and, accordingly, agree to liquidated damages for the aforesaid costs, delay, and harm to the public. The parties acknowledge that liquidated damages of \$1,000.00 are a reasonable estimate, at the time of the execution of this Agreement, of the damages to the Village and the public that will likely occur as a result of the Owner's failure to perform their obligations under this Agreement. The Owner acknowledges that the liquidated damages agreed to are not a penalty and that they, along with any costs incurred by the Village, including legal expenses, may be assessed against the Property along with property taxes.

8. The Owner shall be jointly and severally liable for their obligations hereunder and expressly waive any right to a jury trial.

9. By signing this Agreement the undersigned Owner represents to the Village that they are the Owner of the Subject Property described above.

10. By signing the Agreement, the Chairman of the TOB or his delegate signifies that the TOB has approved this Consent Agreement and has recommended its adoption by the Village Board of Managers.

11. By signing this Agreement, the Village Manager signifies that the Village Board of Managers has approved this Consent Agreement.

12. The effective date of this Consent Agreement is the date the Village Manager signs the Agreement signifying that she has been informed by the Village Board of Managers that the Consent Agreement has been approved.

OWNER:

CHEVY CHASE VILLAGE

Owner #1

By: _____
Samuel Lawrence, Tree Ordinance Board

Owner #2 (If required)

By: _____
Shana R. Davis-Cook, Village Manager

Date: _____

CCV Permitting

From: Tolbert Feather [tfeather@xecu.net]
Sent: Thursday, March 14, 2013 6:07 AM
To: CCV Permitting
Subject: Tree Protection Plans and 7 Newlands

Ellen

7 Newlands - I am approving all requested trees with photos no large trees requested for removal on this request.
There is a sea container trailer in the lot.

Tolbert